



LAW DEPARTMENT

MEMORANDUM

Date: September 14, 2012

TO: Greg Burris, City Manager
FROM: Carl S. Yendes
SUBJECT: Marijuana Ordinance City Council Questions

This is in response to your request regarding City Council's two questions, set out in bold below.

How has your office dealt with arrests/convictions for small amounts of marijuana in the past?

The Municipal Prosecutor's office has prosecuted cases for possession of less than 35 grams of marijuana since the Greene County Prosecutor ceased filing such cases for violations inside the City limits in March, 2004. We prosecuted paraphernalia cases since 2001. I would note that the drug paraphernalia cases we prosecute are not limited to just marijuana paraphernalia, but include possession of instruments associated with use of methamphetamine and other narcotics and illegal controlled substances. The range of punishment for violations of former City Code Sections 78-260 and 78-261, the two ordinances amended by the current marijuana ordinance, was a fine between \$0 and \$1,000, and/or 0 to 180 days in jail.

Our approach to such cases is and has been based on the facts and circumstances of each case. First offense cases of marijuana possession and marijuana paraphernalia usually resulted in a recommendation of either a fine ranging from \$100 to \$250 and court costs, or a suspended imposition of sentence, and a term of probation, with community service, a drug education program, payment of court costs, and good behavior required as conditions of probation. This disposition can allow the offender, if they complete the probation successfully, to avoid having a municipal court record of a conviction for the offense.

Cases involving repeat offenders, or cases with potentially aggravating circumstances, such as, for example, evidence indicating the offender is involved in dealing or possession of larger amounts of marijuana, offender involvement in other criminal activity, or use of marijuana by the offender while driving or in proximity to small children, were subject to being dealt with more severely, in accordance with the

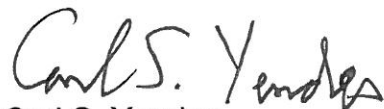
particular facts of the case. These are not uncommon situations, particularly evidence indicating the use of marijuana while driving.

If the current Marijuana ordinance is allowed to stand, how will that change the way you deal with these same situations in the future?

If General Ordinance 6011 remains in effect, the Municipal Prosecutor's office will follow its provisions. We believe the ordinance may contain potential legal issues. However, to the extent the ordinance is legally valid and enforceable, our sentencing recommendations will follow the provisions of the ordinance. This will result in the maximum sentence for all marijuana possession and marijuana paraphernalia cases, notwithstanding prior offenses or other aggravating circumstances, becoming roughly equal to or below this office's past most favorable first offense sentencing recommendation. We are cognizant that the ordinance requires that its provisions be "liberally construed", which the courts will likely interpret as being in a manner most favorable to the accused.

Also, the provisions in G.O. 6011 prohibiting the Municipal Court to require defendants to "post bond, suffer arrest, be taken into custody for any purpose...., suffer prosecution, suffer incarceration....", could render prosecution of these cases, or imposition of sanctions by the court for defendants' failures to appear, or failure to comply with their sentences, somewhat problematic. This language would presumably be entitled to the same liberal construction as the rest of the ordinance. I note that these provisions are also contained in all of the council bills partially amending the current G.O. 6011.

I hope this information is helpful. If you have any further questions, please contact me.

A handwritten signature in black ink that reads "Carl S. Yendes". The signature is written in a cursive, flowing style.

Carl S. Yendes
Chief Municipal Prosecutor
Assistant City Attorney